



June 17, 2002

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CS Docket No. 02-52; FCC 02-77
Appropriate Regulatory Treatment for
Broadband Access to the Internet over Cable Facilities

Dear Mr. Caton:

Amazon.com Holdings, Inc. ("Amazon.com") hereby submits its comments on the Notice of Proposed Rulemaking,¹ in the above-captioned proceeding.

Statement of Interest

A pioneer in electronic commerce, Amazon.com opened its virtual doors in July 1995 and today offers books, electronics, toys, CDs, videos, DVDs, kitchenware, tools, and much more for sale through its website at www.amazon.com. With well over 35 million customers in more than 160 countries, Amazon.com is the Internet's leading retailer. Amazon.com is not a cable system operator ("cable operator"), Internet service provider ("ISP"), or carrier and, yet, because consumer Internet access is an issue of

¹ 67 Fed. Reg. 18848 (April 17, 2002) ("NPRM").

significant interest to Amazon.com's customers and company, we are grateful for this opportunity to offer our views on the issues raised in the NPRM.

Summary

Regardless of whether or not cable modem service is classified as an information service, Amazon.com believes the FCC should impose on cable operators an open access requirement that would permit multiple ISPs to provide consumers unfettered access to all the information, products, and services the Internet has to offer. This is the best way for the Commission to preserve the Internet's distinctive characteristic of enabling consumers to "pull" information, products, and services from millions of sources rather than having a handful of entities "push" out to them, as through the mass media. In addition, the agency should consider rules that would bar parties (either cable operators or broadband ISPs using cable modem facilities) from impeding consumer access to information, products, and services. In Amazon.com's view, such rules are absolutely necessary if the Commission does not impose an open access requirement, and could provide consumers an important safety net if open access is mandated.

I. AMAZON.COM SUPPORTS BROADBAND ACCESS

On behalf of our customers and company, Amazon.com supports the widespread availability of affordable broadband consumer Internet access. In the retail context, broadband provides "always on" connections that allow consumers to easily and quickly purchase items as soon as they recognize a need. Particularly with the increasing availability of networked home communications devices, consumers will be able to buy

“continuously,” rather than having to plan and wait for shopping excursions. No longer will consumers need to keep a list – either mentally, on paper, or in an electronic device – of the items s/he needs, then wait for an opportunity to purchase these items in a trip to brick-and-mortar stores or in an online shopping session. S/he could simply and instantly order items as needs arise. A consumer running low on toothpaste, for example, need only say to the home-networked microphone on the wall above the sink, “one large tube of Crest Regular.” A day or two later, Drugstore.com or some other retailer could have it delivered to the consumer’s door. But without always-on access, a key feature of broadband, such scenarios are impractical.

Broadband will have other positive effects on Internet-based retail. For one, the higher data rates of broadband will dramatically accelerate the delivery of digital goods, such as e-books, music, and videos, that consumers purchase online. For another, the higher speeds will enable more audio-visually intensive product marketing: rather than providing primarily textual descriptions of products, Internet retailers easily could provide consumers much more helpful interactive graphics showing product details from many angles, and audio narrations of product features.

Amazon.com’s support for widely available, affordable consumer broadband Internet access, however, does not mean we are certain of the best way to obtain it. Indeed, even though Amazon.com, which operates in vibrantly competitive and, thus, largely unregulated, market segments, generally favors non-regulation, deregulation, or regulatory forbearance where competition is vibrant, we lack conclusive information on whether incumbent carriers or competitive facilities/resale providers are best positioned

to provide low-cost, high-quality consumer access, or whether rules requiring incumbent carriers to share their facilities are effective or necessary.²

Amazon.com strongly opposes, however, any regulatory action that might immediately or eventually allow cable operators or ISPs using cable modem facilities to impede consumer access to Internet-based information, products, and services disfavored by the operator or ISP. This opposition is the basis for Amazon.com's comments.

II. CHOICE OF INFORMATION, PRODUCTS, AND SERVICES IS KEY

Amazon.com believes the most fundamental consumer choice at issue in these and other FCC Internet access proceedings is *not* the choice among multiple broadband carriers or multiple ISPs. To be sure, such choices involve important differences of price, service levels, and other features and, therefore, are worthy of Commission attention. But the ultimate choice most critical to consumers is the freedom to choose among Internet-based information, products, and services.

A defining characteristic of the Internet is that users may “pull” information from any of millions of sources, rather than having such information involuntarily “pushed” out to them, as with the mass media. If consumer choice is impaired, so is the entire “pull” concept on which the Internet thrives. Broadband Internet access rules that enable entities to limit consumer pull would be a gigantic step backwards, for they would cause

² Amazon.com, therefore, does not yet have an opinion on the policies and specific decisions reached or pending in a host of FCC proceedings relating to, for example, Sections 251 and 271 of the Telecommunications Act of 1996, and we are not yet certain of the effects of the Commission's tentative conclusion that wireline broadband Internet access service is an interstate information service, or its finding that cable modem service is an information service. As described herein, however, if these services were incrementally deregulated to be classified as information services, regulations should be maintained to ensure consumer choice of access to Internet-based information, products, and services.

the Internet to function more like conventional broadcasting/cable offerings, with someone else deciding what information, products, and services consumers receive. Indeed, limiting pull from some sites is the same as incrementally pushing others.³ Surely Congress did not intend deregulation to turn the Internet into yet another mass media network.⁴

Amazon.com believes that the most important freedom of choice to preserve and protect in this proceeding is unimpeded consumer access to all Internet-based information, products, and services. Every Internet user has come to expect that s/he may choose and pull unaltered information from among millions of websites, and that this choice will not unnecessarily affect the technical quality of his/her online session.

Perhaps obviously, consumer choice among Internet-based information, products, and services is no less important via broadband access over wireline, wireless, or satellite facilities than via cable modem. Thus, Amazon.com believes that there should not be any difference in the regulatory treatment of these technologies in this regard. Although intermodal competition may slightly alleviate consumer broadband ISP access concerns, there is tremendous friction for a consumer to move among available broadband technologies, so ISP problems could not be effectively addressed in this way. In other words, even if several forms of broadband service were available to a particular consumer (this is, of course, a big “if”), s/he cannot reasonably be expected to switch among them

³ To be sure, some “push” information is consumer-chosen. For example, a consumer may choose to receive certain information like daily news headlines collected and provided by another party. This situation is very different, however, from limiting consumer choice in the first place.

⁴ With consumer broadband Internet access speeds of only 1-2 Mbps, a better focus might be digital television, a push technology that provides nearly 20 Mbps per broadcast channel, and even more on cable.

(with all the sunk equipment costs, start-up hassles, etc.) just to get a different ISP. Amazon.com does not believe intermodal broadband facilities competition alone can provide sufficient broadband ISP competition.

III. ISPs MAY IMPEDE CONSUMER ACCESS IN MANY WAYS

Broadband Internet service providers may intentionally impede consumer access to Internet-based information, products, and services in many ways.⁵ Importantly, ISPs do not need a direct ownership interest in order to have incentives to impede consumer access. Although it is easy to see, for example, how an ISP that has an online automobile advertising service may be reluctant to allow consumers easy access to competing services, it is just as likely that the ISP would accept compensation from another party in order to impede consumer access to yet another party's services.⁶

The most draconian manner to impede consumer access to Internet-based information, products, or services is to block or redirect connections to specific website addresses. For example, a consumer who tries to direct her browser to www.joespizza.com might, because her ISP has blocked access, receive a "site not

⁵ To the extent that broadband *carriers*, including cable operators, can and do retain access above Layer 2 of the OSI stack, they also are capable of engaging in the behaviors described here. Throughout these comments, therefore, references to broadband ISPs also are meant to include carriers that retain access to TCP/IP information.

⁶ Because Amazon.com is a retailer, our comments primarily address commercial matters. It may be even more important, however, to recognize the free speech issues at stake here. The same sorts of impediments to consumer access erected for commercial reasons could be erected for political, philosophical, religious, or other reasons. For example, a broadband ISP easily could impede access to websites that happen to take a less favored side in a political or religious debate.

found” message. The incentive to do this would be obvious if the ISP also had a pizza operation.

Alternatively, the consumer trying to reach www.joespizza.com might be directed to www.davidspizza.com. It’s not difficult to see why David’s Pizza would be willing to pay the ISP to block access to the Joe’s Pizza site or to divert consumers to the David’s Pizza site. Although Amazon.com’s popularity probably would prevent ISPs from attempting such tactics (because a large number of customers would object), small or new websites would not be protected by similar extant demand.

Alternatively, an ISP could provide differing service quality levels depending on the website from which information, products, or services are accessed. For example, consumers obtaining digital downloads from www.joesdownloads.com might receive much slower service, through no fault of Joe’s Downloads or its connecting networks, than the same digital downloads from www.davidsdownloads.com or other sites. Again, David’s Downloads would be willing to pay ISPs for such advantageous results.

Finally, ISPs may impede consumer access to information, products, and services in somewhat less obvious schemes, that likely would be attempted against the most popular websites. For example, an ISP could, when a consumer directs his browser to the popular www.joespizza.com site, insert atop the main browser window displaying the home page for Joe’s Pizza, a “pop-up box” (essentially a smaller, overlaid browser window) advertising a sale at www.davidspizza.com. As before, inserting a targeted advertisement for David’s Pizza (and perhaps even offering a special deal for existing customers of Joe’s Pizza) could be quite valuable to David’s Pizza and, thus, to the ISP. Similarly, instead of a pop-up box, the ISP could “frame” (subject to copyright

considerations) the Joe's Pizza site within a border obtained by a connection to the David's Pizza website, or the ISP could employ a variety of programming tricks that could "trap" a consumer's browser within a favored – presumably paying – website. An ISP also could discriminatorily cache some websites, making them appear faster, but intentionally neglect to cache other sites.⁷

Experienced "web surfers" may recognize some of these practices as common on the Internet today. Why, then, are they relevant to this proceeding? The difference is that, today, pop-up boxes, framing, "traps," and limited caching (as well as, *e.g.*, the practice of some search engines of accepting payment to favor some search results over others), almost always are employed by individual websites, not by ISPs. And, the few narrowband ISPs that do employ such methods in exchange for "free" service are not the only choices available to consumers. Indeed, precisely because there are millions of websites and hundreds of ISPs, consumers are not forced to accept such practices if they do not like them. The point here is that, if only one ISP were available for broadband access, it would have many economic incentives, and no competition-based disincentives, to impede consumer access to select information, products, and services.

IV. COMPETITION OR REGULATION ARE NEEDED TO GOVERN ISPs

A single choice of broadband ISP does not necessarily preclude unfettered consumer choice among Internet-based information, products, and services: the single,

⁷ These examples do not comprise an exhaustive list: as browsers and other technologies are improved, other means for commercial interference undoubtedly will be developed. Moreover, another nefarious ISP activity could involve monitoring the sites visited by their customers and selling that information for marketing purposes. It may be very valuable to David's Pizza to know that a particular

affiliated ISP *might* not engage in any of the behaviors described above, in spite of the clear economic incentives to do so. Nonetheless, Amazon.com believes consumer choice among multiple broadband ISPs would help ensure consumer choice among information, products, and services. Thus, we support a multiple ISP (“open access”) requirement imposed on broadband facilities providers, including cable operators.

Amazon.com also believes that this requirement must specifically proscribe technical or economic discrimination by the cable system operator among broadband ISPs, for any such discrimination could eviscerate the access requirement. For example, if an affiliated or otherwise preferred ISP were consistently given higher transfer speeds, that ISP would be much more attractive to consumers, of whom that ISP then could take advantage in the ways already described.

Moreover, Amazon.com believes the Commission should consider regulations that directly bar broadband ISP behaviors that discriminatorily impede consumer access to Internet-based information, products, and services. At the very least, such FCC rules could serve as a backstop, if competitive forces among ISPs fail to ensure unimpeded consumer access to information/products/services. And, more importantly, if the Commission chooses *not* to require open access for ISPs, Amazon.com strongly supports a regulatory approach that guarantees consumer choice among Internet-based information, products, and services. Rules could easily be written, for example, to bar broadband ISPs from intentionally providing different levels of access or service to particular websites. Accepting such restrictions should be the minimum concession from

customer of the ISP frequents the website of Joe’s Pizza; David’s Pizza may well be willing to pay the ISP for this surfing information.

cable operators, particularly including small cable system operators, if they believe the costs of accommodating multiple ISPs would be too high.

The choice of statutory authority used to mandate open broadband ISP access and proscribe discriminatory consumer access to information/products/services depends upon whether cable modem service ultimately is found to be a telecommunications or information service. If determined to be the latter – an information service – the Commission should exercise its Title I authority to ensure open access for broadband ISPs and unfettered consumer access to Internet-based information/products/services.

Amazon.com believes it is not sufficient for the FCC to delay regulation until anti-consumer behaviors become apparent. The Commission needs to send a strong signal from the very start that consumer choice of Internet-based information, products, and services is inviolate. Moreover, as described above, the means by which consumer choice may be inhibited can be subtle, and rulemaking processes can be long and uncertain. Important information, products, and services could be held from consumers for years, and small businesses could be crushed before the agency could act. These realities further support immediate FCC action.

V. CONCLUSION

In conclusion, Amazon.com believes the Commission should immediately impose on cable operators an open access requirement that would enable multiple broadband ISPs to provide consumers unfettered access to all the information, products, and services the Internet has to offer. In this way, the FCC can preserve consumers' unimpeded ability to "pull" information, products, and services from millions of sources rather than

having a handful of mass media-style entities “push” to them. In addition, the agency should consider rules that would bar parties (either cable operators or broadband ISPs) from impeding consumer access to Internet-based information, products, and services. In Amazon.com’s view, such rules are absolutely necessary if the Commission does not impose an open access requirement, and could serve as a safety net for consumers even if open access is mandated.

Thank you very much for the opportunity to participate in this proceeding. Please address questions to the undersigned.

Respectfully submitted,

/ S /

Paul E. Misener
VP, Global Public Policy
Amazon.com Holdings, Inc.

pmisener@amazon.com

1200 12th Avenue, South
Seattle, WA 98144
206.266.1478

126 C Street, NW
Washington, DC 20001
202.347.7390